



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Crowley Maritime Salvage  
**File:** B-234555  
**Date:** June 13, 1989

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### DIGEST

1. Protest that award to offeror with second-highest score was inconsistent with agency evaluation plan that provided for award based on highest combined cost/technical point score, and thus was improper, is denied; award may be made to a lower-cost, lower-scored offeror if the agency reasonably determines that there is no significant difference in technical merit.
2. Contracting agency satisfied requirement for meaningful discussions where the notice of the perceived weakness provided during the initial round of discussions led the protester into the area of its proposal needing amplification; having once imparted sufficient information to afford a fair and reasonable opportunity to remedy the weakness, the agency was not required to advise the protester during subsequent discussions that its initial response was inadequate and thereby afford the protester the opportunity to improve its technical rating in this area until it equalled that of other offerors or the maximum score possible.

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### DECISION

Crowley Maritime Salvage protests the Department of the Navy's award of two contracts to GPC, a joint venture of Global Associates and Phillips Cartner Co., Inc., under request for proposals (RFP) No. N00024-87-R-4256. Crowley challenges the evaluation of proposals and contends that the agency failed to conduct meaningful discussions concerning a perceived weakness in Crowley's proposal.

We deny the protest.

The solicitation contemplated the award to one contractor of two contracts, both for a base period of 1 year and 4 option years. One contract was for maintenance and

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operation of two bases and five equipment complexes for the storage and repair of Emergency Ship Salvage Material (ESSM), and the other was for the performance of oil and hazardous materials pollution control operations. The ESSM technical proposals were to be evaluated on the basis of a corporate factor (including management, experience and organization) and proposed personnel, both of equal weight. The pollution control operations proposal would be evaluated on the basis of a corporate factor (experience, organization and management) and the offeror's approach to a hypothetical pollution scenario, both factors being of equal weight, and also on the basis of proposed personnel, a factor as important as the other two factors combined. The evaluation of each of the two contracts would have equal weight in determining the single awardee.

The solicitation stated that cost would be evaluated on the basis of the average of the offerors' fixed man-day rates for various required labor categories, specified estimated material costs, and a 2-percent fixed fee for the operation of ESSM bases. Although the resulting evaluated cost was to be less important than the technical factors, the solicitation cautioned that the importance of cost would increase with the degree of equality of the technical proposals. The Navy's internal evaluation plan, not set forth in the solicitation, provided that up to 400 points would be available for technical factors related to the operation of ESSM bases, 400 points for pollution control operations, and 200 points for cost.

Seven proposals were received in response to the solicitation; all were included in the initial competitive range. After conducting written discussions with offerors, the Navy requested the submission of best and final offers (BAFOs). Subsequently, as a result of ambiguities in the proposals of several offerors, the agency determined that a second round of BAFOs was necessary (after revising the competitive range to exclude three offerors). Evaluation of the revised BAFOs submitted by the remaining four offerors resulted in Crowley's proposal receiving the highest technical score (764.9 of 800 available technical points) and the highest overall score (921.5 points). GPC's evaluated price (\$1,549,000) was slightly lower than Crowley's (\$1,592,000), as was its technical score (757.8 points), resulting in an overall score of 920.9 points, that is, 0.6 points fewer than Crowley's.

The contract award review panel (CARP) determined that although award could be made to Crowley under the evaluation plan on the basis of its higher point score, the two proposals in fact were essentially technically equal, and

therefore recommended that the contracting officer consider making award to GPC on the basis of its \$43,000 lower evaluated cost. In addition, the CARP noted that because GPC had offered to cap its general and administrative overhead rates for certain costs, award to GPC offered the possibility of substantial additional savings in the likely event that nonscheduled costs were incurred. The contracting officer concurred in the CARP's recommendation and, accordingly, awarded GPC both contracts.

#### AWARD BASED ON COST

Crowley first argues that since its proposal received a higher combined cost/technical point score, it was improper to make award to GPC on the basis of its lower evaluated cost. Crowley contends that the agency had already made a cost/technical tradeoff when it calculated the overall evaluation. According to the protester, the award therefore must have resulted from placing undue emphasis upon cost, which the solicitation specified was to be less important than technical factors in the evaluation.

Crowley's argument is without merit. Even where a solicitation, unlike this one, contains a precise evaluation formula and statement that award will be made to the highest point-scored offeror, a contracting officer retains discretion to examine the technical point scores to determine what significance a point differential between offerors represents; if there is no significant difference in technical merit, then award may be made to the lower-cost offeror, even though its total point score may be lower. See Harrison Systems Ltd., 63 Comp. Gen. 379 (1984), 84-1 CPD ¶ 572; M. Rosenblatt & Sons, B-230026, B-230026.3, Apr. 26, 1988, 88-1 CPD ¶ 409.

Here, the agency specifically determined that the Crowley and GPC proposals were equal technically. Therefore, it was entirely appropriate for the contracting officer to make award to GPC based on its lower evaluated cost, and doing so did not evidence an improper overemphasis on cost. It simply reflected the fact that application of the more heavily-weighted technical evaluation factors essentially produced a tie between Crowley and GPC, so that the difference in cost between the two proposals provided the only basis for selection.

#### EVALUATION

Although Crowley has not been provided access to GPC's technical proposal, Crowley challenges the evaluation of GPC's proposal. Specifically, it questions the evaluation

of GPC's corporate experience on the basis that the Navy ignored GPC's "known lack of operational experience" for requirements such as this and instead rated the firm based strictly on what was included in its proposal. Crowley maintains that this approach is inconsistent with our decision in G. Marine Diesel; Phillyship, B-232619, B-232619.2, Jan. 27, 1989, 89-1 CPD ¶ 90.

We find nothing improper in the evaluation of GPC's experience. The record shows that both offerors proposed the extensive use of subcontractors. Agency evaluators characterized the relevant corporate experience of Crowley, which had previously performed an ESSM contract, and of its proposed subcontractors as "extensive," "excellent" and "outstanding" for both the ESSM and pollution control work; as a result, the firm received 91.53 of the 95.24 available points.

As for GPC, agency evaluators concluded that, although the firm did not have specific ESSM experience, the proposed GPC team, including subcontractors, possessed excellent background and experience in work similar to that required for the operation of ESSM bases. On the other hand, the evaluators did fault the proposal for failing to discuss how this experience would be used to manage the agency's inventory control system. Similarly, in rating the firm's pollution control proposal, one of the evaluators noted that GPC's field experience in offshore and salvage-related pollution control operations was "not well documented," but the CARP concluded that GPC and its proposed team of subcontractors nevertheless possessed an outstanding background in responding to all types of oil spills and hazardous material releases and, in addition, deserved full credit in the area of general marine experience. GPC's corporate experience not being as highly regarded as Crowley's, the firm received an overall score of only 80.47 under the criterion. We find no basis for concluding that this point differential did not accurately reflect the different quality of the two offerors' corporate experience.

In G. Marine Diesel; Phillyship, we held that where the solicitation evaluation scheme sets forth prior experience and performance under prior contracts as an evaluation factor and an offeror references in its proposal its performance under a major ongoing contract with the contracting agency, the agency is required to consider in its technical evaluation the problems encountered by the firm in performing the contract. This holding has no application here. The Navy states that it is unaware of any extrinsic information that contradicts GPC's representations in its proposal as to the prior corporate experience of the

joint venturers and their proposed subcontractors, and Crowley has not documented the existence of any specific, extrinsic evidence concerning GPC's experience that the agency was aware of but ignored in the evaluation.

Crowley speculates that GPC's score under the evaluation factors for corporate experience could only have been based on the experience of the personnel proposed by GPC, which Crowley argues would be improper since the solicitation provided for the separate evaluation of corporate experience and proposed personnel. While Crowley is correct that it generally is improper to consider personnel experience under a corporate experience factor where there are separate evaluation factors for each, Washington State Commission for Vocational Education--Reconsideration, 64 Comp. Gen. 681 (1985), 85-2 CPD ¶ 59, our review of the record provides no basis for concluding that the agency did so here. As already discussed, the Navy did consider GPC's corporate qualifications, separately from its personnel qualifications, in rating the firm under that factor. The record similarly shows that GPC was rated under the personnel factor based strictly on its personnel qualifications. (GPC's personnel were found "highly qualified" with "outstanding background.") Thus, Crowley's speculation is unfounded and this allegation is without merit.

#### DISCUSSIONS

Crowley challenges the adequacy of discussions. In evaluating Crowley's initial proposal, the evaluators generally concluded that Crowley's discussion of its proposed organization for the operation of ESSM bases lacked detail concerning configuration management and work orders, and specifically questioned how the organization would handle the special situations likely to be encountered. Accordingly, in the first request for BAFOs, the Navy advised Crowley that its proposal "lacked discussion under Organization on how special situations may be handled." Although the agency found that Crowley's subsequent response provided additional information regarding how its proposed organization would handle large projects, the agency also concluded that Crowley still had not provided details on its organization to handle smaller work orders. Therefore, Crowley's response only increased its score under the criterion for proposed ESSM organization from 15.55 of 22.22 available points to 17.78 points. The agency did not again raise this issue in its request for a second round of BAFOs.

Crowley argues that since the Navy had not advised Crowley that it wanted a specific discussion of small work orders, the agency's failure to notify Crowley during subsequent

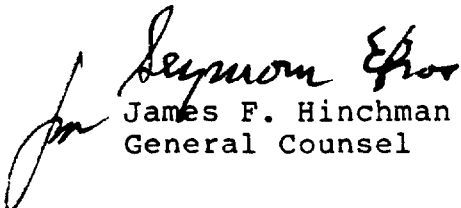
discussions that Crowley's response had been incomplete constituted a failure to conduct meaningful discussions.

We disagree. Although agencies generally must conduct written or oral discussion with all responsible offerors within a competitive range, advising them of weaknesses, excesses, or deficiencies in their proposals, agencies are not required to afford offerors all encompassing discussions, or to discuss every element of a technically acceptable competitive range proposal that has received less than the maximum possible score. Rather, agencies generally must only lead offerors into the areas of their proposal that require amplification. See Range Technical Services, B-231968, Nov. 14, 1988, 68 Comp. Gen. \_\_\_, 88-2 CPD ¶ 474.

While we would agree that the deficiency notice could have been more specific, the Navy explains that the handling of numerous small work orders is considered a special situation in the operation of ESSM bases. It therefore appears that the Navy's statement to Crowley that its proposal needed more discussion on how special situations would be handled should have been sufficient to lead Crowley into the area of its proposal requiring amplification. This being the case, the Navy was not required to raise the issue again and help the firm, through a series of negotiations, to improve its technical rating in this area until it equaled that of other offerors or the maximum score possible. See Aydin Vector Division of Aydin Corp., B-229569, Mar. 11, 1988, 88-1 CPD ¶ 253.

In any case, we find reasonable the agency's position that, even if Crowley had received the additional 4.44 points necessary for a perfect score under the ESSM organization factor, thereby resulting in technical scores of 769.34 points for Crowley and 757.8 points for GPC, this would not have altered the determination that the proposals were essentially technically equal; a slight improvement in Crowley's technical score would not have offset GPC's 2.7 percent lower cost. Thus, it does not appear that the alleged deficiency in discussions would have had any effect on the award decision.

The protest is denied.

  
James F. Hinchman  
General Counsel